REAL ESTATE COMMISSION MEETING

Heber M. Wells Building Second Floor - Room 210 9:00 a.m. May 18, 2005

MINUTES

STAFF MEMBERS PRESENT:

Dexter Bell, Division Director
Mark Fagergren, Education/Licensing Director
Jon Brown, Enforcement Director
Dee Johnson, Investigator
Shelley Wismer, Assistant Attorney General
Blaine Ferguson, Assistant Attorney General
Renda Christensen, Board Secretary
Dave Mecham, Investigator
Amy Corak, Real Estate Education Secretary
Amanda Orme, Mortgage Education Secretary

COMMISSION MEMBERS PRESENT:

Gage Froerer, Chair Dorothy Burnham, Vice Chair Maralee Jensen, Commissioner Bonnie Peretti, Commissioner H. Blaine Walker, Commissioner

GUESTS

Brent Israelsen, Nxlight Perri Babalis, Assistant Attorney General Rob Hicks, Nxlight M. Gale Lemmon, Assistant Attorney General Curtis Bullock, UAR

Karen Post, Salt Lake Board of Realtors

Linda Leavitt Kevin Swensen, Stringham School

The May 18, 2005, meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Gage Froerer conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

A motion was passed to defer approving the minutes until next months meeting.

DIVISION REPORTS

INVESTIGATIONS REPORT – Jon Brown

Mr. Brown reported 81 cases logged in April, 59 new cases opened, 27 files closed,

leaving 249 open cases. He said these numbers reflect the CE audit numbers. A

breakdown of the numbers show out of the 81 cases logged, 31 are real estate complaints and 50 are CE audit cases; new cases opened show 11 are real estate and 48 are CE audits; files closed are 25 real estate cases and 2 CE audit cases.

Mr. Brown is concerned with the volume of cases being opened on CE audits. He said there are several Stipulations coming up, and wanted to let the Commission know there will be a number of cases coming before them on these audits. The Division is sending out Stipulations with fines of \$500 for not having the Core Course, and \$100 per hour for lack of CE hours.

The Commission has shown concern on the amount of people failing the CE audits. Ms. Christensen said this is the fourth month of audits where she has audited 40% of the online renewals. In the month of April, she audited 100% of the online renewals to do a test month. She said the mail for one day showed 60 responses with 6 cases being opened.

Ms. Wismer noted that applicants need to be treated equally. When someone renews online, they automatically get their license. If someone renews by mail and has an incomplete application, they are not licensed until they comply with the rules. The Commission discussed the option of suspending the licenses of those who fail the audit.

<u>DIRECTOR'S REPORT</u> – Dexter Bell

Director Bell said there is a legislative hearing at 2:00 p.m. today on mortgage fraud. Mr. Brown, Mr. Johnson and Director Bell will be leaving to attend this meeting. The hearing scheduled at 2:00 for Joseph Johnson has asked to have his application withdrawn.

Director Bell reported he had attended a TIC (Tenant-In-Common) meeting. Also present were Mark Griffin, former Securities Division Director, Ms. Wismer and Blaine Ferguson from the Attorney General's office, Commissioner Walker, George Richards, and Gary Leavitt. It was a decided Director Bell would create a rough draft of some rules by tomorrow so they will be ready for the June 2, 2005 meeting. The ideas for the draft rules will be on principals and what the rules should consist.

SB64 was enacted on May 2, 2005 and requires the Division to have acting rules. This is the rule that said certain real estate transactions are not securities and are under the jurisdiction and the licensure of the Division and the Commission. There are two reasons why rules are needed, other than the legal mandate. People buying TIC's tend to be small investors, and TIC's are 1031 deals which put time pressures on parties. Both of these require good disclosure.

Director Bell said he spoke to the Utah Business License Association in Ogden. The Association was concerned why real estate agents were not being charged for a license. Director Bell said a sales agent can't run a business without a principal broker. The Division has a statute saying the fees the Division charges are all that the state may charge, including it's subdivisions. Principal Brokers are the only licensees that can be charged for a business license in their locality. The Association wants the mortgage licensees to have a solicitation license.

Chair Froerer had some question on establishing a minimum services bill. He asked if the Division's current statutes cover the recent statute dealing with minimum services. Director Bell said the bill is quite specific in mandating services. Ms. Wismer said if someone violates the bill, the investigators would pursue the matter as if were any other violations. The Commission would like to see a rule saying offers must be presented during the terms of the REPC and should cover receipt for all documents.

EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren said statistics from last May to April, the growth in licensees has been a little over 10%, which is approximately 2,000 licensees. He said approximately 40% are long term, consistent agents. Approximately 60% are transitional agents that come and go. This means there is quite a bit of turnover going on in the profession.

Mr. Fagergren reported on the status of the Task Force on Education, and had Karen Post make a few comments as to the progress of the meetings. She said a third meeting was held yesterday, and they are still working on a proposal to bring before the Commission and Division. They are looking at two separate proposals: one would require statutory change, the other one could probably be changed with administrative rules. They are having another meeting in June and are still working on a proposal.

Mr. Fagergren reported the RFP for the testing center to have CE auditing capability will be out before the next Commission meeting. This will open up the bid to all competitors because it is no longer proprietary information. The burden will be placed on the educational provider to upload the data on attendees.

He mentioned the discussion from last month's meeting on an individual who had a Master's Degree in real estate development from a well-known university. Based on that it was discussed to initiate a rule that would enable the Division to review the

background and waive all or part of the 90 hours of required education. The Commission said taking Utah law and the REPC should be mandatory. Ms. Wismer reviewed the Utah rules and found nothing mandating a sales agent to have a specific 90 hour course. The rule refers to education being approved by the Commission and the Division. She said the Commission could approve this waiver as the equivalent. The Commission will bring up the topic up in Executive Session.

OTHER BUSINESS

Mr. Ferguson said he had received a request from Dave Johnson asking if they could have extra lines printed on the REPC's blank addendum form. He asked if the Commission would concur with this request. A motion was passed to allow more lines on the addendum.

Mr. Ferguson mentioned a company that does electronic versions of real estate forms wants to do business in Utah. They are in attendance in the meeting today and would like a few minutes to present their proposal. Brent Israelsen with Nxlight said approximately five years ago their company did the world's first electronic mortgage transaction from beginning to end using Utah's digital signature statute. As part of that process, they helped create the guidelines on how to purchase an electronic promissory note. Nxlight is currently working on a project to develop electronic real estate REPC forms. The system would have a built-in tracking process to showing an audit history and everything that has happened to the document from beginning to end. At the end of the day it would have tamper-proof seals placed on the documents. Nxlight is currently working with the Utah Insurance Commission. Mr. Israelsen said the company would like to set up a demonstration for the Commission and Division to

show the complete process. The Commission said they would like to see a demonstration at the next meeting on June 15th.

Mr. Ferguson spoke about the procedure for informal hearings. He said in every hearing there are two parties: the applicant, and the Division staff. The Attorney General's Office is counsel for the Division and typically made an opening statement during the hearing. Because these are time sensitive hearings, it has been changed over the course of time, to have the AG's office ask questions at the end. Mr. Ferguson recommends having the AG's office start to ask questions at the beginning of the hearing so they would focus on current information. The Commission agreed to start this procedure on the hearings scheduled for today.

Ms. Wismer said there were two rule drafts to review. R162-2-1, Qualifications for Licensure and Exam Application, needs to be revised to say an applicant for a sales agent license must have at minimum, a high school diploma or equivalent education. It also spells out that pre-licensing education must be taken before the exam. A motion was passed to accept the changes and approve to start the rulemaking process.

R162-9-2, Education Providers, has been called the "backdoor certification loophole." It would also provide if someone has gone out of state and taken a class from a national provider, they would be able to get CE credit on an individual basis. It is a reworking of the draft the Commission reviewed last month. The Commission will review the draft and give their decision later today.

The Title Insurance Division is thinking of setting up a Commission similar to those in

place for Real Estate, and has asked to have a couple of representatives from the AG's office sit in on the licensing hearings for today. Gale Leavitt and Perri Babalis are the representatives that will be observing today. The applicants will be asked at the beginning of each hearing if they are fine with this idea.

LICENSING HEARINGS

10:42 Bradley D. Thompson – Application for License Dan R. Thompson, Father Dale Quinlan, Principal Broker, Re-Max Elite
 11:24 Ryan Christensen – Application for License
 11:49 Christopher Evans – Application for License

A motion to go into Executive Session was passed, and was held from 12:15 p.m. to 1:10 p.m. This was a working lunch.

1:10	Renee Roman – Application for License
1:35	Laura Brunello – Application for License
2:00	Joseph Johnson – Application for License He has requested to withdraw his application.

Review of Lesser Criminal Convictions:

Bryan Berry
Robyn Baird
Jeremy Brooksky
Michael Fitches
Dennis Hanlon
Curt Hoekstra
Michael Hoffee
Susan Kennedy
Crystal Lawrence
Thomas K. Morgan
James Quinn
Amori Shaw
Jon Sill
Jeff Stam
Steven E. Vail

A motion to go into a second Executive Session was made and held from 2:40 p.m. to

3:05 p.m.

RESULTS OF EXECUTIVE SESSION

Informal Hearings:

Bradley D. Thompson - Denied

Ryan Christensen - Granted

Christopher Evans – Granted on probation and pending broker notification Renee Roman – Granted, immediately suspended until fines are paid and off probation.

Laura Brunello - Denied

Joseph Johnson – Requested to withdraw his application.

Stipulations:

David Irwin - Approved James M. Cragun - Approved Ronald Perez - Approved Linda Rae Kynaston (Hess) - Approved

Lesser Criminal Convictions:

Bryan Berry – Schedule for hearing

Robyn Baird - Approved

Jeremy Brooksky – Approved

Michael Fitches - Approved

Dennis Hanlon - Approved

Curt Hoekstra - Approved

Michael Hoffee - Approved

Susan Kennedy - Approved

Crystal Lawrence - Approved

Thomas K. Morgan - Approved

James Quinn - Approved

Amori Shaw – Schedule for hearing

Jon Sill - Approved

Jeff Stam – Schedule for hearing

Steven E. Vail - Approved

OTHER BUSINESS

The Commission would like to see the fines on Stipulations increased. Currently it is \$500 per violation. Ms. Wismer said it would take a statute change to be able to raise the limit.

Commissioner Walker brought up the topic of door-to-door solicitation where it would require sales agents to have a license. He recommended Director Bell write a letter to

the League of Cities and Towns stating sales agents are not required to be licensed. If they need proof of identification, they can show their license for the protection of the public.

Commissioner Walker said he had a title company try to justify cutting commission checks instead of the broker. The Commission said this topic was discussed last year, and that in no circumstances can anyone other than the listing broker control the funds.

The Commission decided to review the draft of R162-9-2 at next months meeting.

Commissioner Jensen will not be at the next meeting, because she will be out of the country.

A motion was made and accepted to adjourn the meeting at 3:20 p.m.